41ST CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 77.

KANSAS CLAIMS.

[To accompany bill H. R. No. 2176.]

JUNE 9, 1870.—Ordered to be printed and recommitted to the Committee of Claims.

Mr. AMASA COBB, from the Committee of Claims, made the following

REPORT.

The Committee of Claims, to which was referred the bill H. R. 115, authorizing the appointment of a commissioner and the settlement of claims of citizens of Kansas, make the following report with substitute for bill:

These are claims upon the government for indemnity for losses of property by citizens of the Territory of Kansas at the hands mainly of government officials, or parties acting under them, at a period when, under the organic act, they were made the legal wards of the government, and, therefore, could look to no other authority for redress. The committee are, therefore, of the opinion that it is proper to consider and determine this case regardless of any rules or established principles involving individual or State rights that may have been adopted by the government toward any claimants in the rebellious States in cases growing out of the late war.

The facts in this case were fully proved by credible testimony before an impartial commission in Kansas, over ten years ago, and no awards were made for time lost, or for constructive damages in any form, but only for actual losses for which the government was considered as responsible. The magnitude of the losses sustained by the early settlers of Kansas makes the case one of unusual importance, and while not over one-fourth part of such estimated losses was proved before the commission, yet the sums so proved, and for which compensation is now asked, amounts to over $450,000. The right to indemnity in this case was officially recognized by several of the territorial governors of Kansas in their public messages, also by several of the territorial legislatures of Kansas in memorials to Congress, and by the constitutional convention that framed the present constitution of the State, and the case has been heretofore favorably acted upon by this House in the thirty-fourth and thirty-sixth Congresses without final determination.

The committee have chosen, for the purposes of this report, to avoid, as far as possible, all reference to evidence from a partisan or sectional source; it is therefore thought that the basis for a proper understanding of the claim can be best obtained by a reference to the official report of the special committee appointed by the House of Representatives of the thirty-fourth Congress, under a resolution of March 9, 1856, appointing Hons. John Sherman, of Ohio; William A. Howard, of Michigan; and Mordecai Oliver, of Missouri, a congressional committee to investigate and report to Congress relative to the Kansas difficulties then existing. Their conclusions, after a thorough investigation of sev-

eral months spent in taking testimony in the Territory, were well set forth in their report in a volume of twelve hundred pages, from which we make the following extracts:

Your committee deem it their duty to state, as briefly as possible, the principal facts proved before them. When the act to organize the Territory of Kansas was passed on the 30th of May, 1854, the greater portion of its eastern border was included in the Indian reservations not open for settlements, and there were but few white settlers in any portion of the Territory. Its Indian population was rapidly decreasing, while many emigrants from different parts of our country were anxiously waiting the extinction of the Indian title, and the establishment of a territorial government, to seek new homes on its fertile prairies. It cannot be doubted that if its condition as a free Territory had been left undisturbed by Congress, its settlement would have been rapid, peaceful, and prosperous. Its climate, its soil, and its easy access to the older settlements would have made it the favored course for the tide of emigration constantly flowing to the West, and by this time it would have been admitted into the Union as a free State, without the least sectional excitement. If so organized, none but the kindest feelings could have existed between its citizens and those of the adjoining State. Their mutual interests and intercourse, instead of, as now, endangering the harmony of the Union, would have strengthened the ties of national brotherhood. The testimony clearly shows that before the proposition to repeal the Missouri compromise was introduced into Congress, the people of Western Missouri appeared indifferent to the prohibition of slavery in the Territory, and neither asked nor desired its repeal.

When, however, the prohibition was removed by the action of Congress, the aspect of affairs entirely changed. The whole country was agitated by the reopening of a controversy which conservative men in different sections believed had been settled in every State and Territory by some law beyond the danger of repeal. The excitement which has always accompanied the discussion of the slavery question was greatly increased by the hope, on the one hand, of extending slavery into a region from which it had been excluded by law; and, on the other, by a sense of wrong done by what was regarded as a dishonor of a national compact. This excitement was naturally transferred into the border counties of Missouri and the Territory, as settlers favoring free or slave institutions moved into it. A new difficulty soon occurred. Different constructions were put upon the organic law. It was contended by the one party that the right to hold slaves in the Territory existed, and that neither the people nor the territorial legislature could prohibit slavery; that that power was alone possessed by the people when they were authorized to form a State government. It was contended that the removal of the restriction virtually established slavery in the Territory. This claim was urged by many prominent men in Western Missouri, who actively engaged in the affairs of the Territory. Every movement, of whatever character, which tended to establish free institutions, was regarded as an interference with their rights.

Within a few days after the organic law passed, and as soon as its passage could be known on the border, leading citizens of Missouri crossed into the Territory, held squatter meetings, and then returned to their homes. Among their resolutions are the following:

"That we will afford protection to no abolitionist as a settler of this Territory.

"That we recognize the institution of slavery as already existing in this Territory, and advise slaveholders to introduce their property as early as possible."

Similar resolutions were passed in various parts of the Territory, and by meetings in several counties of Missouri. This unlawful interference has been continued in every important event in the history of the Territory; *every election* has been controlled not by actual settlers, but by citizens of Missouri; and, as a consequence, every officer in the Territory, from constable to legislators, except those appointed by the President, owe their positions to non-resident voters. None have been elected by the settlers; and your committee have been unable to find that any political power whatever, however unimportant, has been exercised by the people of the Territory.

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By an organized movement, which extended from Andrew County in the north to Jasper County in the south, and as far eastward as Boone and Cole Counties, Missouri, companies of men were arranged in irregular parties and sent *into every council district in the Territory, and into every representative district but one.* The numbers were so distributed as to control the election in each district. They went to vote, and with the avowed design to make Kansas a slave State. They were generally armed and equipped, carried with them their own provisions and tents, and so marched into the Territory. The details of this invasion form the mass of the testimony taken by your committee, and is so voluminous that we can here state but the leading facts elicited.

The committee then proceed to draw a clear picture of the outrages perpetrated by these Missouri bands during their invasion of the Terri-

tory on the 30th of March, 1855, when they pretended to elect members of a legislative assembly that soon obtained a world-wide reputation as the makers of the famous "bogus laws." Of this assembly and their works the committee report as follows:

Your committee do not regard their enactments as valid laws. A legislature thus imposed upon a people cannot affect their political rights. Such an attempt, if successful, is virtually an overthrow of the organic law, and reduces the people of the Territory to the condition of vassals to a neighboring State. To avoid the evils of anarchy, no armed or organized resistance to them would have been made, but the citizens would have appealed to the ballot-box at future elections, to the federal judiciary, and to Congress for relief. Such, from the proof, would have been the course of the people but for the nature of these enactments and the manner in which they are enforced. Their character and their execution have been so intimately connected with one branch of this investigation—that relating to "violent and tumultuous proceedings in the Territory"—that we were compelled to examine them.

The great body of the general laws are exact transcripts from the Missouri code. By the Kansas statutes every officer in the Territory, executive and judicial, was to be appointed by the legislature, or by some officer appointed by it. These appointments were not merely to meet a temporary exigency, but were to hold over two regular elections and until after the general election in October, 1857. Thus, by the terms of these "laws," the people have no control whatever over either the legislature, the executive, or the judicial departments of the territorial government, until a time before which, by the natural progress of population, the territorial government will be superseded by a State government.

No session of the legislature is to be held during 1856, but the members of the house are to be elected in October of that year. A candidate, to be eligible at this election, must swear to support the fugitive slave law, and each judge of election, and each voter, if challenged, must take the same oath. The same oath is required of every officer elected or appointed in the Territory, and of every attorney admitted to practice in the courts.

Any man of proper age who was in the Territory on the day of the election, and who had paid one dollar as a tax to the sheriff, who was required to be at the polls to receive it, could vote as an "inhabitant," although he had breakfasted in Missouri and intended to return there for supper. There can be no doubt that these unusual and unconstitutional provisions were inserted to prevent a full and fair expression of the popular will in the election of members of the house, or to control it by non-residents.

All jurors are required to be selected by the sheriff, and "no person who is conscientiously opposed to the holding of slaves, or who does not admit the right to hold slaves in the Territory, shall be a juror in any cause affecting the right to hold slaves, or relating to slave property."

On the arrival of your committee in the Territory the people were arrayed in two hostile parties. Their hostility continually increased during our stay, by the arrival of armed bodies of men, who, from their equipments, came not to follow the peaceful pursuits of life, but armed and organized into companies apparently for war, by the unlawful detention of persons and property while passing through the State of Missouri, and by frequent forcible seizures of persons and property in the Territory without legal warrant. Your committee regret that they were compelled to witness instances of each of those classes of outrages. While holding their sessions at Westport, they saw several bodies of armed men, confessedly citizens of Missouri, march into the Territory on forays against its citizens, but under the pretense of enforcing the enactments before referred to. The wagons of emigrants were stopped in the highways, searched without claim of legal process, and in some instances all their property taken from them.

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Resistance to these lawless acts was not made by the settlers, because, in their opinion, the persons engaged in them would have been sustained and re-enforced by the citizens of the populous border counties of Missouri, and from whence they were only separated by the river. In one case, witnessed by one of your committee, an application for the writ of habeas corpus was prevented by the urgent solicitation of pro-slavery men, who insisted that it would endanger the life of the prisoner to be discharged under legal process.

While we remained in the Territory, repeated acts of outrage were committed upon quiet, unoffending citizens, of which we received authentic intelligence. Men were attacked in the highway, robbed, and subsequently imprisoned; others were seized and searched, and their weapons of defense taken from them without compensation. Horses were frequently taken and appropriated. Oxen were taken from the yoke while plowing, and butchered in the presence of their owners. A minister was seized in the streets of the town of Atchison, and, under circumstances of gross barbarity, was tarred and cottoned, and in that condition was sent to his family. All the pro-

visions of the Constitution of the United States securing persons and property were utterly disregarded. The officers of the law, instead of protecting the people, in some instances were engaged in these outrages, and in no instance did we learn that any man was arrested, indicted, or punished for any of these crimes. While such offenses were committed with impunity, the laws were used as a means of indicting men for holding elections preliminary to framing a constitution, and applying for admission into the Union as the State of Kansas. Charges of high treason were made against prominent citizens, upon grounds which seem to your committee absurd and ridiculous; and under these charges they are now held in custody, and are refused the privilege of bail. In several cases, men were arrested in the State of Missouri while passing on their lawful business through that State, and detained until indictments could be found in the Territory.

These proceedings were followed by an offense of still greater magnitude. Under color of legal process, a company of about seven hundred armed men, the great body of whom your committee are satisfied were not citizens of the Territory, were marched into the town of Lawrence, under Marshal Donaldson and Sheriff Jones, officers claiming to act under the law, and then bombarded and burned to the ground a valuable hotel and one private house, destroyed two printing-presses and material, and then, being released by the officers, whose posse they claimed to be, proceeded to sack, pillage, and rob houses, stores, trunks, &c., even to the clothing of women and children.

This force was not resisted, because it was collected and marshaled under the forms of law. But this act of barbarity, unexampled in the history of our government, was followed by its natural consequences. All the restraints which American citizens are accustomed to pay, even to the appearance of law, were thrown off.

Your committee report the following facts and conclusions as established by the testimony:

Firstly. That each election held in the Territory, held under the organic or alleged territorial law, has been carried by organized invasion from the State of Missouri, by which the people of the Territory have been prevented from exercising the rights secured to them by the organic law,

Secondly. That the alleged territorial legislature was an illegally constituted body, and had no power to pass valid laws, and their enactments are therefore null and void.

Thirdly. That these alleged laws have not, as a general thing, been used to protect persons and property and to punish wrong, but for unlawful purposes.

The report of which the foregoing is a part was signed by William A. Howard and John Sherman, and was understood at the time to have been written mainly by the latter gentleman. The changes of ten years have not effaced one line of its truth, but the hand of sectional hate has furrowed deeper and deeper the lines of sorrow and distress in the hearts of many of that stricken people. Lawrence has again been laid in ashes by Quantrell's band of maddened demons from across the same border. Over two hundred martyrs sleep in the Lawrence cemetery, who had placed themselves in the foreground to battle for a truth, and several among them were numbered with these claimants. This is at least an admonition that tardy justice may become injustice.

Then followed in rapid succession all the scenes of outrage, plunder, and murder that went to make up the events of what was termed the "Wakarusa war," and the atrocious incidents of 1857, the details of which may be found in the printed Mis. Doc. No. 47, accompanying this case. It is only necessary to state here, that while all these scenes were upon the stage, and the hardships and losses named were being endured by the real settlers of the Territory, they were well and publicly assured by the governors of the Territory, and by different public committees, that they had a valid claim against the government for all the property of which they were robbed by parties under the command of officers of the United States—military or civil—or for stores and supplies furnished the militia officially recognized by the territorial governor. This was indicated by the following extracts. In the midst of scenes of great excitement in Lawrence, a sort of armistice was signed by Governor Shannon, on the one part, and by Charles Robinson and James H. Lane, on the other part, December 8, 1865, wherein it was—

Provided further, That Governor Shannon agrees to use his influence to secure to the citizens of Kansas Territory remuneration for any damages suffered in any unlaw-

ful depredations, if any such have been committed, by the sheriff's posse in Douglas County.

On the morning of May 21, 1856, the day that Lawrence was sacked by a band of invaders under the lead of J. B. Donaldson, the United States marshal for Kansas Territory, a committee of the citizens addressed a petition to the said marshal, in the following words:

That we represent the citizens of the United States and of Kansas who acknowledge the constituted authorities of the government; that we make no resistance to the execution of the laws, national or territorial; and that we ask protection of the government, and claim it as law-abiding American citizens.

For the private property already taken by your posse we ask indemnification, and what remains to us and our citizens we throw upon you for protection, trusting that under the flag of our Union and within the folds of the Constitution we may obtain safety.

This was signed by Hon. S. C. Pomeroy and the other members of the said committee; but, notwithstanding this appeal, within the next hour the Free State Hotel and other buildings were in flames. Stores were robbed indiscriminately, and the entire loss by the general sacking on that day is shown to have been not less than $150,000. On the day following, another committee of citizens addressed to Governor Shannon a memorial setting forth their condition, from which the following is an extract:

As regards the pecuniary damage sustained by this community at the hand of the government, as administered by these officials, we cannot doubt but you will see the justice of our claim, and employ the influence of your position to procure for us an adequate compensation. The readiest way to do this would seem to be by an appropriation by Congress which it is within your province to recommend. It is at present impossible to estimate this damage, as new depredations are continually being made. How long these will be permitted to continue will depend to a great extent upon the pleasure of our rulers. But it is certain that the amount is, even at present, for a community like ours, very great, and there is scarcely a freeholder in Lawrence, or for miles around, but has had costly experience of that depredatory action which the marshal in his proclamation has called the "proper execution of the law."

Again, in October of the same year, as the evidence shows, after John W. Geary became the territorial governor, and while the Missouri River was blockaded so that emigrants could no longer enter Kansas by that or any of the other lines of ordinary travel to that Territory, a large emigrant party of over two hundred, under the lead of Colonel Eldridge, Hon. S. C. Pomeroy, and others, entered the Territory, via Mount Pleasant, Iowa, and after their arrival they made a formal report to Governor Geary, in which the following language occurs:

We were stopped near the northern line of the Territory by the United States troops, acting, as we understood, under orders of one Preston, deputy United States marshal, and after stating to the officers who we were, and what we had, they commenced searching our wagons, (in some instances breaking open trunks and throwing bedding and wearing apparel upon the ground in the rain,) taking arms from the wagons, carrying away a lot of sabers belonging to a gentleman in the Territory, &c.; in consequence of which we were detained about two-thirds of a day, *taken prisoners*, and are now presented to you. All we have to say is, that our mission to this Territory is entirely peaceful. We have no organization save a police organization for our own defense on the way, and coming in that spirit to this Territory, we claim the right of American citizens to bear arms, and to be exempt from unlawful search and seizure.

Trusting to your integrity and impartiality, we have confidence to believe that our property will be restored to us, and that all that has been wronged will be righted.

[Signed by Samuel C. Pomeroy, Edward Daniels, and others.]

It is shown that the property thus taken was never returned to the owners.

In January, 1857, Governor Geary, in his message to the legislature, used the following language:

I have discovered great anxiety in relation to the damages sustained during the past civil disturbances, and everywhere the question has been asked as to whom they shall look for indemnity. These injuries—burning houses, &c.—have been fruitful sources

of irritation and trouble, and have impoverished many good citizens. They cannot be considered as springing from purely local causes, and, as such, the subjects of territorial redress. Their exciting cause has been outside of this Territory, and the agents in their perpetration have been citizens of every State in the Union. It has been a species of national warfare waged upon the soil of Kansas.

In adjusting the question of damages, it appears proper that a broad and comprehensive view of the subject should be taken; and I have accordingly suggested to the general government the propriety of recommending to Congress the passage of an act for the appointment of a commissioner to take testimony and report to Congress for final action, at as early a day as possible.

It was during the first week in May, 1856, while the United States district court, over which Judge Lecompte presided, was convened at Lecompton, that the judge delivered a remarkable charge to the jury, urging them to indict for high treason all who were found resisting the territorial laws, and a few days later the said jury found a presentment, indicting as public nuisances two weekly newspapers in Lawrence, and the Free State Hotel, then just completed, and they recommended, in due form, that steps be taken to abate or remove the said nuisances.

Also, several instances occurred where the federal authorities denied the legal electors a free election, which is one of the most vital franchises guaranteed by a republican government.

To what extent the government officials were the agents of the offenses so often perpetrated on the free-State settlers at this period, is further shown in Gihon's History of Kansas, page 186:

Deputy marshals who, in some instances, had rendered themselves obnoxious by their habits of partisan oppression, were at the head of United States troops, constantly scouring the country, entering free-State towns, and, under the shadow of authority and the cover of protection of the soldiers, committing offenses against decency and the quiet of the community more reprehensible than those ever *alleged* against the parties of whom, in many instances, they were in search; and they were becoming almost as great a terror to unoffending people as the hords of banditti which had previously infested the highways. The refusal of the governor, therefore, to continue to furnish the means for these officials to pursue such practices, was followed by the most beneficial results.

It is not possible for your committee, in the limits of this report, to preserve the historical chain unbroken so far as has been shown by the evidence, for its details fill volumes. It appears that the people of Kansas could not forget the wrongs and acts of outrage that had been inflicted upon them in the name of pretended law, and the territorial legislature approved an act February 23, 1857, authorizing the appointment of a commissioner "to audit and certify claims" in accordance with the provisions therein specified. H. J. Strickler was appointed such commissioner and commenced his labors September 1, 1857, and in March following he made his report to Congress, showing that he had made awards in three hundred and fifty-seven claims, amounting to $293,222 15.

Commissioner Strickler, who had been an adjutant general of the territorial militia under Governor Shannon, and who was recognized as an appointee and representative of the general government, in his report to Congress used the following language:

But common justice and a reasonable respect for men who claim the prerogatives of American birthright demand that the acts of all parties in Kansas be regarded as the legitimate result of the action of the government. The mantle of mutual forgiveness must be spread over all that has passed, and the actors and participants in the territorial troubles be regarded by their opponents as men who zealously contended for their rights and the establishment of principles in which their faith and confidence were sincere. Making due allowance for each other under these circumstances, and uniting their efforts to present the facts to Congress in the manner contemplated by the act under which this commission originated, not doubting that the many worthy and patriotic men who have sustained losses will have their grievances redressed by the authority to which they have a right to present their just demands.

The territorial delegate, Hon. M. J. Parrott, had the matter referred and a bill was afterward presented in relation to said losses, but it does not appear that any further action was had thereon.

Again, on the 7th of February, 1859, it was provided by an act of the territorial legislature, entitled "An act to provide for the adjustment and payment of claims," that three commissioners should be appointed, one by the governor and one by each branch of the legislature, "whose duty it should be to audit and certify all claims for the loss of property taken or destroyed, and damages resulting therefrom, during the disorder which prevailed in this Territory from November 1, 1855, to December 1, 1856." Edward Hoagland, Henry J. Adams, and Samuel A. Kingman were appointed as said commissioners. They were in constant session nearly five months, and took testimony in four hundred and eighty-seven cases. This much exceeded the number who appeared before Mr. Strickler, the former commissioner, as the free State men had never until this date been represented in the territorial legislature, therefore this was the first commission that they would generally recognize. The total amount claimed was upward of $500,000. The amount awarded, after fully considering the testimony offered in each case, was $454,001 70, and on the 11th of July, 1859, they made their report to the Wyandott constitutional convention, then in session. In that report occurs the following sentence:

> It is known that President Buchanan has, in private conversation, expressed himself favorable to a proper indemnity of individuals, provided the government can have the claims presented in such a form that the Territory stands as voucher and sponsor for the reality and justness of the several demands, and that the awards be made on the auditing of claims, according to some general rule equally applicable to men of all parties, or by a tribunal fairly constituted, and representing the several interests and views of the political parties involved. Many members of both Houses of Congress coincide in these views, but they will never consent to the appointment of a roving commission, with power to come to Kansas and hear and redress grievances *ad libitum*. The whole subject must be compressed in a nutshell, and so presented as to not only avoid discussion, but to secure the support of men of all parties.

As an evidence that this commission performed its duties in the spirit claimed for it, it appears that the following classification is made of the property for which claim is made. Amount of crops destroyed, $37,349 61; number of buildings burned, 78; horses taken or destroyed, 368; cattle taken or destroyed, 533; amount of property owned by pro-slavery men, $77,198 99; property owned by free State men, $335,779 04; property taken or destroyed by pro-slavery men, $318,718 63; property taken or destroyed by free State men, $94,529 40. This enumeration of values is obviously incomplete, but is supposed to give the classes so far as known.

In February, 1860, the territorial legislature adopted the following:

> *Resolved*, That Congress be requested to appropriate the sum of $500,000, or 500,000 acres of land, for the payment of the claims awarded by the commissioners appointed by the acts approved February 7, 1859, and February 11, 1859, for the property taken or destroyed, and damages resulting therefrom, during the disorder which prevailed in Kansas from November 1, 1855, to December 1, 1856.

A similar resolution was also appended to the schedule of the State constitution, signed in convention at Wyandot, July 29, 1859.

Under these resolutions, and by the direct agency of the claimants, the claim for losses was duly presented again in this House during the first session of the thirty-sixth Congress, when this committee gave the subject the most elaborate consideration, extending through both the first and second sessions, when the chairman, Mr. Tappan, of New Hampshire, submitted a lengthy report of some one hundred printed pages in favor of the claims, on the 2d of March, 1861, which was ordered to be

printed, and two days afterward Congress adjourned without further action. The same order also provided for printing the entire testimony submitted in support of each claim; and this together made a volume of some one thousand seven hundred pages, which is known as "Report No. 104, 36th Congress, 2d session." Reference is made to the said testimony for all the details of evidence in support of this claim. Your committee have examined the same sufficiently to form the opinion that the case has merit, but in what manner justice can be best secured to the claimants it is not so clear to determine. As the report thus made by our predecessors has never had any further consideration by the House, and as they gave a concise summary of the facts proved, and their conclusions in reference to the responsibility of the government in view of the same, it is deemed best to quote from them the following paragraphs, in which we concur:

After carefully examining an immense mass of testimony, official correspondence, and documents, as well as the most authentic histories of these disorders, your committee have come to the conclusion that the following facts are most fully and clearly established:

First. That the election of the first territorial legislature was carried by organized invasion from the State of Missouri, by which the people of the Territory were prevented from exercising the rights secured to them by the organic law, and deprived of any voice in the enactment of the laws under which they were to live and upon which they were to depend for the protection of their lives and their property.

Second. That the legislature thus illegally and fraudulently elected proceeded to enact laws with special reference to the perpetuation of their usurped power, and to fill all the subordinate offices which it created with men of violent partisan principles and prejudices, wholly opposed in sentiment and feeling to a very large majority of the people.

Third. That the laws thus enacted were used by the officers so elected, not to protect the lives and property of the citizens, but to render both as insecure as possible, and to worry and harass them till they should seek relief in flight from the country which they had chosen for their future homes.

Fourth. That murderous raids and forays, rendering life and property insecure, and often resulting in great destruction of both, were aided and encouraged, and often instigated by government officers, both federal and territorial, under pretense of "enforcing the laws."

Fifth. That all efforts at self-protection, whether in defense of their lives and property, or their homes and firesides, and the chastity of their wives and daughters, were systematically and maliciously misrepresented and charged as rebellion against the laws, with treasonable intent to overthrow the constituted authority of the country.

Sixth. That no armed organization, whether secret or open, was ever formed among the "free-State" people for the purpose of resisting the laws or constituted authorities, or for unlawful purposes, but were purely defensive in their character, and rendered absolutely necessary for their protection against the outrages to which they were constantly exposed.

Seventh. That the executive authorities at Washington were criminally and willfully ignorant of the true state of things in Kansas, or they were knowingly parties to these outrages, and failed to use the powers vested in them for the preservation of life and property.

Eighth. That the losses for which indemnity is asked by these claimants were clearly the result of the abuse of the powers of this government, or the failure on the part of its officers to use the powers vested in them for the protection of the rights of the people of the Territory, and that these claimants have a just and equitable claim upon the government for the indemnity which they ask.

The obligation of the government to indemnify its citizens for the loss of property resulting from the abuse of official power, or from a failure to exercise the powers vested in it for the purpose of protecting its citizens, is a principle well established, and which has been fully recognized by all just governments.

In a memorial address to the legislature of Maryland, where indemnity was asked for property destroyed by a mob in the city of Baltimore, the Hon. Reverdy Johnson used the following language: "The moral responsibility, which with sovereignty is ever deemed the highest responsibility, to redress the wrongs of its citizens in person or property occurring from mismanagement, or from the neglect and defective exercise of the power with which a government is clothed, is a proposition sustained by the clearest principles of reason, and approved by every political writer of reputation

since man enjoyed political freedom. The duty of allegiance necessarily involves the corresponding obligation of protection. If the property of the citizen is taken in support of government, and personal service exacted in its defense; if his private and natural rights are held subordinate to his social duties and the claims of government, he has a clear right to protection from it. If this be not so, of what avail is our boasted maxim that no man shall be deprived of life, liberty, or property, without due process of law? Freedom is a mockery, and it holds out the word of promise to the ear, and breaks it to the hope. The obligation to protect necessarily assumes the obligation to redress. No good government can be perfect in which the right to both is not secured. If you fail to protect, through default, can there be any doubt of the duty to indemnify?"

The legislature of Maryland recognized the soundness of this reasoning by providing by suitable enactments for full indemnity in the case presented. (See laws of Maryland, 1835, chap. 184, "An act to indemnify parties for property destroyed by mobs.")

In the report submitted to the House of Representatives of the Commonwealth of Massachusetts, upon a similar application for indemnity in April, 1854, by the Hon. B. F. Butler, he uses the following language: "The commonwealth had a right to call on the community in all things to conduct according to the laws of the land, and to pay their just proportion to the support of the government. These were their duties as citizens, and no man questions that they were faithfully performed. What has the citizen then to claim in return? Clearly, to be protected in his personal property. To what extent? If not absolute protection, to put the case in the most favorable light for the government, at least that the State shall use all due and reasonable diligence to furnish such protection, or to provide an indemnity to the injured. It may be that a sudden and stealthy wrong is done the citizen which the government cannot guard against. If so, the individual must bear the loss. These principles are so well recognized as to have become almost axiomatic, and need only to be stated to obtain the fullest assent. The inference, then, is irresistible, inevitable, that the commonwealth ought to indemnify the injured parties in this transaction for their actual loss."

There is also another class of cases in which governments are required, by every principle of justice, to make compensation to those who have suffered loss through the negligence or misconduct of its officers. We allude, of course, to those cases where individuals suffer injury because the ordinary duties of government have not been performed by those appointed to discharge them; as, for instance, when property is destroyed in time of peace by a mob composed of unknown persons, or when, through the failure to keep streets and thoroughfares in proper condition, unavoidable accidents, occasioning injuries either to persons or property, are met with.

It is not necessary to cite adjudicated cases of the kind referred to, where corporations or cities have been condemned to make compensation. All are familiar with their existence, and it can hardly be necessary to say that, so far as to the principle involved in such cases, it is as applicable to claims resulting from them against the governments of States as against those merely municipal in their character.

The municipal governments of cities, like governments of States, are established for the accomplishment of objects essential to the well-being of the people within their jurisdiction; and as all the powers necessary for the attainment of the ends aimed at are vested in them, they are bound to give to their citizens the various benefits and advantages which they were created to secure. If those living under a municipal government so constituted are injured or subjected to losses because the government refuses to exercise the powers conferred on it, or because the agents employed under their authority to carry them into effect either neglect or violate their duty, the government is held to be responsible to those who are aggrieved, on the ground that there has been a breach of the obligation imposed on it in their favor by the mere fact of its creation for the benefit and advantage of all. And then we ask, Is not this equally true with respect to the governments of the States? Is not the same obligation to secure their citizens against violence and wrong, and to extend to them the advantages proposed to be derived from their establishment, necessarily imposed on them also by the mere fact of their creation in the public interest? And do not the same legal and equitable consequences follow from their failure to act at all in discharge of this obligation, or from the neglect or misconduct of the officers to whom they have intrusted the performance of the functions necessary to carry it out? For our own part, we are constrained to say that we can discover no real difference, upon principle, between claims made in cases of the nature referred to, no matter what may be the character of the government under which they arise, and that the only practical difference which exists between them grows out of the fact that the government of a State, being sovereign, cannot be sued, while that of a city is amenable to judicial pursuit.

Although the determination of the question involved in the present question does not in any way depend upon the rules of international law, yet it is true that cases frequently arise in the intercourse of nations with each other, connected with the in-

dividual rights of their citizens, which are calculated to throw some light on the point under investigation. If a citizen of one country is injured or subjected to loss while in another, by the unauthorized or illegal acts of officials, it has always been held that the government of the country where the wrong was done is bound to make reparation for it, and that it is the duty of the country to which the person aggrieved belongs to demand it for him. This is the settled practice among civilized nations, and the history of our own negotiations with foreign powers presents various instances in which such claims have been allowed and paid to our own citizens by foreign governments, upon the interposition of our government in their behalf. And why is this? Is it not upon the ground that a government is, in law and equity, bound to make reparation in such cases, and that the obligation is so complete and incontrovertible upon the principles of civil or municipal law, as contradistinguished from the law of nations, that it is not only the right of a nation to claim the fulfillment of the obligation in behalf of its citizens, but it also has the right, by the law of nations, to enforce its fulfillment, in the event of a refusal, even by resort to war? If this is so; if by the law of nations it is the duty of our government to compel a foreign government to make reparation to our citizens for the injuries done them by the improper or illegal acts of its agents, on what ground, or with what show of justice, can it be pretended that our own government is not bound to make the same reparation when similar injuries are suffered from the improper or illegal acts of our own agents?

From all these various considerations it seems clear to your committee that the transactions giving rise to the claim before us are in no way embraced in the reason of the general rule that "nations are not responsible for the illegal acts of their agents," and that they are, in truth, within the reason of those in which it has been uniformly held by our court that an obligation to repair wrongs suffered or losses incurred by individuals is justly imposed on the public. Indeed, it is not easy to conceive of a case which is more entirely within the recognized principles of law. The transactions on which the claim is founded took place beyond the limits of any government competent to protect or vindicate the rights of individuals, and, it may be said, without the pale of civilized society. The only authority which could have been legitimately exercised there over American citizens was vested in the very man who was engaged in the perpetration of the wrong complained of, and that man's usurpation of power was sustained by an overpowering physical force, which his official position alone enabled him to command. There was no means within reach of the sufferers by which the usurpation of power which caused the injury done could have been prevented, or by which the responsibility incurred by those concerned in depriving them of their property could have been enforced.

But this is not all. Your committee are constrained to say, in addition to this, that the executive department of the government seems to have failed altogether to make any efforts for the assistance or relief of our citizens who had been so grievously injured, after the facts in relation to the injury done them had been brought to their knowledge; and that there is good reason to believe that it was chiefly owing to its unwillingness to act that the principal wronger, when there was an attempt made to bring him to justice upon his venturing with the jurisdiction of our courts, was enabled to escape without a trial or even a decent judicial investigation.

So far as your committee are informed there has been nothing in the practice of the government which is at all inconsistent with the views to which we have just given expression, while on the other hand there has been much in its previous action which seems to indicate a distinct recognition of their correctness.

Without attempting an enumeration of the instances of that character, it will be sufficient for our purpose to refer to a single instance in the action of Congress in which such a recognition is implied.

This is furnished by the act (6 Stat. at Large, p. 679) entitled "An act to provide for the settlement of the claims of Mary O'Sullivan," approved July 2, 1836.

If the principles laid down by these high authorities be correct, the questions remaining to be considered are, whether the losses for which indemnity is asked by these petitioners from Kansas have been carefully and fairly adjusted and fully proved, whether the circumstances under which they took place are such as to bring them within their operation, and whether the federal government is the proper source from which to seek redress.

In the belief that Congress would fully recognize its obligation to indemnify those who were deprived of their property by the failure of the government to protect it, and in order to lend its aid to the sufferers in procuring indemnity from Congress, the territorial legislature, at its sessions of 1859, provided by law for the appointment of three commissioners, one by the governor, one by the legislative council, and one by the house of representatives, to investigate these losses, and make awards to claimants for such losses as they should prove for property actually taken or destroyed. The law also provided for the appointment of an attorney by joint ballot of the two houses of

the legislature, whose duty it was to attend the sessions of the commissioners, and resist any extravagant or unreasonable claims.

The acts further provided that, upon the presentation of the certificate of award made by the commissioners to the auditor of the Territory, it should be the duty of that officer to issue his warrant upon the treasurer for the amount, providing, however, that said warrant should not be paid before the first of January, 1865, unless Congress should sooner make provision for their payment, thus showing, by this conditional assumption by the Territory of this indebtedness, the conviction of the legislature of the justice of these claims.

For a full report of the proceedings of the commissioners, and for a copy of the law under which they acted, and the rules and regulations which they adopted for the government of their proceedings, the amount and character of the claims presented, and the awards made, your attention is respectfully invited to the report of the commissioners, and the testimony now before the committee.

A full knowledge of the character of these losses, and the circumstances under which they took place, can only be gained by the examination of the testimony taken by the commissioners; and such an examination would clearly show that they all resulted from the neglect or misconduct of the officers of the government.

* * * * * * If the circumstances under which these losses took place, as shown by the evidence, does not bring them clearly under the operation of the principles before stated as creating an obligation of indemnity from government, it would seem impossible to conceive of a case that would.

The only remaining question for consideration is whether the federal government is the proper source from which these claimants should look for indemnity. The federal government has, from its inception, claimed and exercised the right to govern the Territories.

In the organic law of Kansas, Congress has limited and defined the scope and power of its legislature, and qualified it by giving the governor the veto power. Its executive and judicial officers are appointed by the President, by and with the advice and consent of the Senate. The people have no voice in their election and no power to control their action. They can neither compel them to discharge their duties nor prevent the abuse of the powers lodged in their hands, or remove them for inefficiency or malfeasance. It would seem that a simple statement of these facts was a sufficient answer to this question.

The government has power to appoint, control, or remove the officers on whom the people depend for protection, or compel them to do their duty; and on failing to exercise this power, and thus render life and property secure, it would seem perfectly clear that it is the duty of the government to indemnify the parties suffering from this neglect. In view of all the facts and circumstances it would seem impossible to imagine a case where citizens would have a stronger ground for an appeal to their government for redress, or a clearer right to indemnity.

It is undoubtedly the duty of the citizens to make known to the proper authorities threatened danger to their rights when they have cause to apprehend danger, so that the officers of government may use their powers for protection. This the people of Kansas have not neglected. They have repeatedly appealed to the government officers in the Territory, and invoked the interposition of the military forces stationed there for their protection; presented their grievances to the President, to Congress, and finally to their fellow-citizens throughout the United States, and having failed to secure protection, they now appeal to Congress as a last resort for indemnity for losses which they have suffered. They do not ask Congress to restore to life those murdered friends and relatives. That is beyond their power to grant. Neither do they ask compensation for time lost, damage sustained by interruption to their business, or money expended in their own defense, but simply that Congress will restore to them the property of which they have been deprived through the failure of their government to extend to them that protection which they had a right to claim.

The committee do not believe that Congress or the government can successfully contend for a moment that it must refuse to do justice because it involves the expenditure of a large sum of money. The treasury of the nation is far less sacred than its public faith. It is but a plain act of justice that the government should pay for the damages which they deliberately do to a friend of the government, and doubly so when that friend is powerless to appeal to any other authority for aid, as was the case with the territorial subjects who make this claim. There is not a claimant who did not then openly acknowledge that he owed supreme allegiance to the government, and, in return, the government owed to each claimant, as its loyal subject, full protection to both person and property. There was no State in rebellion. There was no

organized political body in Kansas at war with the United States so far as to place these claimants in an enemy's country, or beyond the protection of our laws, or our courts, or our arms. Consequently it cannot be urged that the claims are of the common class, growing out of the casualties or incidents of war, a class that the government may safely disregard, viz., claims for an enemy's property in an enemy's country. The evidence is abundant that no subjects of this government have ever made greater sacrifices to preserve the life and honor of the nation than the pioneers of Kansas, of whom these claimants were the especial representatives.

Another well-recognized principle of public law, under which this claim for indemnity is brought against the government, provides that when the government converts the private dwelling of a citizen into a barrack or a depository of the munitions of war, thereby subjecting it to an attack from which it would otherwise have been exempt, and the house is thereby destroyed by the enemy, such government is legally bound for full indemity.

So this government ordained, by the repeal of the Missouri compromise, that Kansas should become the vantage-ground in the impending crisis, and that the stife there should determine whether liberty or slavery should be perpetual within its domain, and there is believed to be ample authority for holding the government responsible for indemnity in this case. Although it may not be possible to prove that *the motive* was present, the inevitable result could not have been misunderstood. It is therefore for the vindication of history, as well as for the payment of a just claim, that this measure may be recommended.

When the tide of emigration to Kansas set in, it produced an unusual political agitation both North and South, as to whether it should become free or slave Territory. Large companies, composed of men, women, and children, were rapidly formed and sent there in colonies from nearly every State in the Union. The northern emigrants far outnumbered the southern. It became necessary, therefore, in securing a temporary ascendancy for the pro-slavery party, to rally the devotees of slavery along the border of Missouri and Arkansas, for the purpose of carrying the first territorial election in their interests. Several thousands were thus taken into the Territory and "voted," when they immediately returned to their homes in the States, never pretending to any change of residence. A legislature was thus elected strongly pro-slavery. The real *bona fide* citizens of the Territory became justly indignant at this most unparalleled public outrage, and loudly protested against the legality of laws enacted by such a body, and they appealed to Congress for redress. This soon brought down upon them the persecution and vengeance of the United States marshals, their deputies, &c., who were acting defiantly in the pro-slavery interest, and here the contest began. The pro-slavery element, embracing every desperate and vicious character, was readily organized as the posse of the said marshals, and these forces, which were little better than mobs, soon began a career of plunder, robbery, and murder.

Much of the property for which indemnity is claimed is proved to have been taken for public use, without the consent of the owner, and claims for such losses are recognized by the highest law known to our government. But still more of it was destroyed by the bands of plunderers referred to above, in some cases called a posse, in other cases military forces, under the lead of United States marshals, or military commanders, acting under the authority of the general government. And now it would be the most utter fallacy to announce that the government may

deny these parties compensation or redress, and attempt to substitute for justice some vague declaration of public law that is only operative between belligerent nations or independent powers. Every dollar of the property for which claim is made was under the protection of the Constitution and laws of the United States, and it was deliberately taken and destroyed, or converted to public use, against the protest or appeal of the owner, and now the rights of the claimants or the obligations of the government can no longer remain a question in dispute, after giving due consideration to the law and the testimony in the case.

While this committee might desire under other circumstances to provide that a general revision of all the claims should be had, by a new commission sent to Kansas by the United States authority, to reopen each case and put each claimant upon trial anew, such a proceeding is now regarded as impracticable, mainly on account of the time that has elapsed since the events occurred. Many of the claimants, and still more of their witnesses, are doubtless dead, and others could not be conveniently found; therefore, impossibilities should not be required. Some of your committee have closely examined the character and validity of the testimony generally introduced in the evidence furnished, and they conclude that the proof is in most cases ample and full, so that the government should require no further precaution, unless it may be in special cases wherein their merit may be a subject of doubt. Besides, it should be observed that when the three commissioners were appointed who made the awards, one was appointed by the territorial governor, who was a federal officer and representative of the government, whose interests it might be claimed were thus represented in the ratio of one in three. For such cases as may require further consideration and proof ample provision is made in the accompanying bill, which, for the purposes of economy and justice, provides the most practical plan, and its passage is recommended.